

Section 800.18 Workers' compensation appeals.

(a) Papers on appeal.

An appeal from a decision of the Workers' Compensation Board shall be heard upon one copy of the papers constituting the record list as herein prescribed, together with an appendix to appellant's brief, which shall comply with section 800.8 of this Part and contain a copy of each item of the record necessary to consider the questions raised, including those items appellant reasonably assumes will be relied upon by a respondent. Respondent's brief may contain an appendix which, however, shall contain only such additional parts of the record as are necessary to consider the questions involved, or the parties may agree upon a joint appendix. Where all papers in the record on appeal are deemed relevant to the issues, appellant may proceed upon the required number of copies of the record on appeal, and in the event of such an election an appendix shall not be required.

(b) Record list.

- (1) Appellant shall prepare a statement of the issues he intends to present for review by the Appellate Division, together with a list of the papers relevant to those issues. Transcripts of testimony shall be listed according to date, and each paper and exhibit listed shall, where possible, be designated by date and brief description.
- (2) Unless, within 45 days after service of a notice of appeal, the Workers' Compensation Board shall vacate, modify or rescind the decision which is the subject of the appeal, within 30 days after expiration of said 45 days or, in the event the board sooner determines that it will not vacate, modify or rescind the decision, within 30 days after the board serves a notice of such determination on appellant, appellant shall serve a copy of the proposed record list upon the Attorney General and each party affected by the board decision, together with a written stipulation reciting that the papers, testimony and exhibits listed therein constitute all of the papers necessary and relevant to the issues. Appellant shall also serve upon the parties affected a written request to stipulate to the contents of the record list within 20 days. Within 20 days after such service, any party so served may make objections or amendments to the record list and serve them upon appellant.
- (3) If a party timely served with a proposed record list shall fail to serve objections or amendments within said 20 days, the record list shall be deemed correct as to that party, and appellant shall affix to the record on appeal an affirmation certifying to the timely service of the proposed record list and request to stipulate and to the failure of one or more parties to comply with the request or to make objections or amendments thereto within the time prescribed.

- (4) Within 20 days after service of a proposed record list, a party respondent shall serve upon appellant any proposed objections or amendments thereto. Appellant and the objecting party shall have 20 days thereafter in which to agree upon the objections and amendments to the record list and to stipulate in writing thereto. If they are unable to agree, within 10 days after expiration of said 20 days, appellant shall make application to the board for settlement of the record list. A copy of the board's decision shall be attached to the record list.
 - (5) When filing the original record on appeal, appellant shall file the record list, together with the stipulation, board decision or affirmation, Hearing transcripts, certified as correct by the hearing reporter, shall, in the absence of objection, also be deemed correct.
 - (6) A decision of the board upon an application to settle a record list shall be reviewable by motion pursuant to section 800.2(a) of this Part. The moving papers shall contain a copy of the board decision and the papers submitted to the board upon the application. Where necessary, the court will obtain the board's file for use on the motion.
- (c) Form and content of record.

A record on an appeal pursuant to section 23 of the Workers' Compensation Law shall comply as to form with section 800.5(a) of this Part and shall contain:

- (1) a soft cover containing the title and names, addresses and telephone numbers of the attorneys;
- (2) a table of contents which shall list and briefly describe each paper, including the date thereof, included in the record and each exhibit. The part relating to a transcript of testimony shall separately state as to each witness the page at which direct, cross, redirect and recross examination begins. The part relating to exhibits shall briefly describe each exhibit and shall indicate the page where admitted in evidence and whether the exhibit has been omitted from the record;
- (3) a statement pursuant to CPLR 5531;
- (4) the notice of appeal and, in chronological order, the papers set forth in the record list;
- (5) a stipulation dispensing with reproducing any exhibits in the record. Omitted exhibits which are material to the issues raised shall be filed when briefs are filed; and
- (6) a certification or stipulation in lieu thereof.

(d) Certification of record.

The record on appeal shall be certified as true and correct by the secretary or other designee of the Workers' Compensation Board, by a certificate of appellant's attorney pursuant to CPLR 2105, or by a stipulation in lieu of certification pursuant to CPLR 5532.

(e) Filing and service of papers. Within 60 days after the last day to agree upon objections or amendments to the record list, or, when the parties are unable to agree, within 60 days from settlement of the record list by the board, or, if no objections or amendments to the record list have been served, within 60 days from the last day to serve them, appellant shall file with the clerk the record on appeal together with 10 copies of appellant's brief and appendix, with proof of service of one copy of the record and two copies of appellant's brief and appendix upon the Attorney General and each respondent affected by the board's decision. Respondent's brief shall be served and filed in accordance with the provisions of section 800.9(b) of this Part, except that a respondent shall file proof of service of two copies of a respondent's brief upon every other interested party to the appeal.

(f) When to be heard; application of rules. Appeals shall be scheduled at terms designated for workers' compensation appeals in accordance with the provisions of section 800.11 of this Part the Attorney General may continue an appeal to a subsequent term by filing, within 14days from service of appellant's brief, proof of service of a notice of adjournment. Except as otherwise provided in this section, the provisions of this Part governing appeals generally shall apply to workers' compensation appeals.

(g) Remittitur. Upon entry of an order on the court's decision, the record on appeal shall be remitted to the Attorney General with a copy of the order for filing with the Workers' Compensation Board.